

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.184 of 2013

Arising out of PS.Case No. -302 Year- 2001 Thana -KAKO District- Jehanabad

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Gobardhan Yadav, son of Karamat Yadav, Resident of Village Balubigha, P.S. Kako, District Jehanabad.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Vikramdeo Singh, Advocate.
Mr. Sudhir Kumar Sinha, Advocate.

For the Respondent : Mr. A.K. Sinha, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 24-12-2014

This appeal has been filed on behalf of the sole accused/appellant assailing the judgment/order dated 18/22.02.2013 passed by *Ad hoc* Additional Sessions Judge-IV, Jehanabad in Sessions Case No. 54 of 2005/Sessions Trial No. 75 of 2006, whereunder sole appellant has been convicted for the offence under Section 302/34 of the Penal Code and Section 27 of the Arms Act and sentenced to suffer Rigorous Imprisonment for life, pay fine of Rs. 50,000/-, in default of payment of fine, to further suffer one year Rigorous

Imprisonment. For conviction under Section 27 of the Arms Act he has been awarded Rigorous Imprisonment for three years with direction to pay fine of Rs. 5,000/-, in default of payment of fine to undergo Rigorous Imprisonment of three months.

2. Prosecution case, as set out in the *fardbeyan* of Karamat Yadav (not examined), resident of Village- Balu Bigha, P.S.- Kako, District- Jehanabad, recorded by Sub-Inspector Ramesh Singh, Officer-in-Charge, Kako Police Station on 19.12.2001 at 8:15 A.M in the house of the deceased in Village- Balu Bigha is that in the previous night after taking meal informant was sleeping in the verandah of his house. His other family members were sleeping inside the house. Around 10:00 P.M. sound of firing shots was heard, the informant woke up and saw in the lantern light that Gopal Yadav, Lallu Yadav, both residents of Balu Bigha and 3-4 others armed with rifle, pistol had surrounded his verandah. Meanwhile the daughter-in-law of the house came out from inside and informed the informant that on the roof of the house Bullu Yadav and his wife have been shot at by the miscreants.



Informant also went to the roof and found his son Bullu Yadav and his daughter-in-law Judarni Devi to have suffered gun shot injury and were dead. Informant raised alarm but none of the villagers came to his house. In the First Information Report informant has further stated that he had land dispute with aforesaid Gopal Yadav and Lallu Yadav. He further stated in the said *fardbeyan* that his deceased son Bullu Yadav also had dispute with regard to partition of land with his brother Badri Yadav and Gobardhan Yadav, appellant. In the concluding portion of the *fardbeyan* informant also claimed that his son Badri Yadav, Gobardhan Yadav hatched a conspiracy with Gopal Yadav, Lallu Yadav and got his son Bullu Yadav and his daughter-in-law Judarni Devi killed by Gopal Yadav, Lallu Yadav. Perusal of the *fardbeyan* indicates that over the same Girja Yadav, P.W. 2 has also put his signature and is the attesting witness of the *fardbeyan*. The *fardbeyan* was forwarded by the scribe Sub-Inspector Ramesh Singh of Kako Police Station on the basis of which present Kako P.S. Case No. 302/2001 dated 19.12.2001 was registered under



Section 302/120(B) of the Penal Code and Section 27 of the Arms Act and the Officer-in-Charge, Kako Police Station took over the investigation of the case. Having completed the investigation, *charge-sheet* was submitted only against the appellant as another co-accused Badri Yadav remained absconding. So far Gopal Yadav, Lallu Yadav are concerned, the Investigating Officer submitted Final Form against the two. In the light of the *charge-sheet* cognizance was taken and the case was committed to the court of Sessions for trial. In support of the prosecution case prosecution examined as many as seven witnesses out of whom P.W. 1 Sheo Nandan Yadav, P.W. 2 Girja Yadav, P.W. 3 Sumanti Devi, P.W. 4 Hansmuhia Devi have not supported the prosecution case and have been declared hostile.

3. Prosecution case has, however, been supported by P.W. 5 Sunita Devi, daughter of the deceased and P.W. 6 Ramesh Yadav, P.W. 7 Akhilesh Yadav, the brother-in-law of Bullu Yadav and brother of Judarni Devi.

4. Defence has also examined four witnesses, namely, D.W. 1 Krishna Singh Yadav,

D.W. 2 Ramtit Yadav, D.W. 3 Ramji Yadav, D.W. 4 Surya Narayan Singh and also relied on the certificate issued by officer of N.T.P.C. Sri Ramesh Kumar (Exhibit-A).

5. It may be stated here that P.Ws. 6, 7, brother-in-law/brother of the two deceased are not eye-witnesses of the occurrence. They have only come to the witness-box to corroborate the prosecution case that they learnt about the occurrence from the mother/mother-in-law of the two deceased and wife of the informant.

6. P.W. 5, Sunita Devi, daughter of the deceased has claimed in her Examination-in-Chief that she along with her mother Judarni Devi was sleeping inside the room in the night of the occurrence when the miscreants led by the appellant, Badri, Kapil, Dinesh and others arrived and resorted to firing killing her parents. The accused persons threatened her to maintain silence and fled away. She informed her grandfather, the informant about the occurrence who not only scolded but also asked her to maintain silence and she became quiet as she was a child. In Paragraph 2

she stated that she also recorded her statement before the police.

7. Learned counsel for the appellant submitted that true it is that P.W. 5 recorded her police statement about the occurrence before the Investigating Officer but such statement was recorded in the Police Station after four months of the occurrence and from perusal of the said statement it will appear that appellant though named in the police statement of P.W. 5 but is not named as an assailant rather as the one who was present along with the assailants.

8. It is further submitted on behalf of the appellant that further perusal of the evidence would indicate that no source of identification is mentioned either in the *fardbeyan* or in the statement or in the evidence of P.W. 5 in which she identified the assailants, as such, this Court may conclude that P.W. 5 has named the appellant in her police statement as also in the evidence in court because of the enmity which her parents had with him.

9. Learned counsel for the appellant



further submitted that neither the informant nor the doctor nor the Investigating Officer of the case has been examined to establish the prosecution case. It is further submitted that P.W. 5 Sunita Devi having been examined by the police after four months of the occurrence, her evidence in court is not fit to be relied as she did not even inform her maternal uncle P.W. 6 Ramesh Yadav, P.W. 7 Akhilesh Yadav that appellant was either the assailant of her parents or he was the member of the unlawful assembly which trespassed into the room to kill them by using fire-arm.

10. Counsel for the State through supported the impugned judgment but could not dispute the fact that the sole so-called eye-witness P.W. 5 Sunita Devi has been examined by the Investigating Officer after four months of the occurrence. He also could not dispute in view of her police statement and the evidence recorded by her in court that she has attempted to improve the prosecution case with respect to the appellant.

11. In the light of the submissions noted above, we proceed to analyze the evidence of



the sole eye-witness P.W. 5 and the two corroborative witnesses P.W. 6, 7, her maternal uncle. P.Ws. 6, 7, the two maternal uncle of P.W. 5 Sunita Devi, came to the place of occurrence in the morning of the occurrence i.e. on 19.12.2001, learnt about the occurrence from the mother/mother-in-law of the two deceased. The two corroborative witnesses have not learnt from their own niece P.W. 5 that appellant was also one amongst the assailants nor they have learnt from her that she had seen the occurrence. In these circumstances, it is difficult for us to accept that Sunita Devi, P.W. 5 is the eye-witness of the occurrence.

12. P.Ws. 6, 7 cannot be relied even as a corroborative witness as they have learnt about the occurrence from the mother/mother-in-law of the two deceased but the mother/mother-in-law of the deceased having not been examined, it will be difficult for us to even rely on their evidence.

13. In view of our finding above, we are of the view that there is absolutely no legal material on the basis of which we can maintain conviction of the appellant, as recorded in the

impugned judgment, which is set aside. The appellant is in jail custody, as such, directed to be released forthwith, if not wanted in any other case.

14. The appeal stands allowed.

15. Send back the Lower Court Records.

(V.N. Sinha, J)

(Rajendra Kumar Mishra, J)

P.K.P.

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